

## § 1208.1

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AUTHORITY: 44 Stat. 577, as amended; 45 U.S.C. 151–163.

SOURCE: 39 FR 1751, Jan. 14, 1974, unless otherwise noted.

### § 1208.1 Purpose.

The purpose of this part is to set forth the basic policies of the National Mediation Board and the National Railroad Adjustment Board in regard to the availability and disclosure of information in the possession of the NMB and the NRAB.

### § 1208.2 Production or disclosure of material or information.

(a) *Requests for identifiable records and copies.* (1) All requests for National Mediation Board records shall be filed in writing by mailing the request or delivering it to the Executive Secretary, National Mediation Board, Washington, DC 20572, except that requests for records of the National Railroad Adjustment Board shall be in writing and addressed to the Administrative Officer, National Railroad Adjustment Board, 220 South State Street, Chicago, Illinois 60604.

(2) The request shall reasonably describe the records being sought in a manner which permits identification and location of the records.

(i) If the description is insufficient to locate the records, the National Mediation Board will so notify the person making the request and indicate the additional information needed to identify the records requested.

(ii) Every reasonable effort shall be made by the Board to assist in the identification and location of the records sought.

(3) Upon receipt of a request for records the Executive Secretary shall maintain records in reference thereto which shall include the date and time received, the name and address of the requester, the nature of the records requested, the action taken, the date the determination letter is sent to the requester, appeals and action thereon,

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the date any records are subsequently furnished, the number of staff hours and grade levels of persons who spent time responding to the request and the payment requested and received.

(4) All time limitations established pursuant to this section with respect to processing initial requests and appeals shall commence at the time a written request for records is received at the Board's offices in Washington, DC, except for requests directed to the National Railroad Adjustment Board pursuant to § 1208.2(a)(1) in which case the time limit shall commence when the request is received at the NRAB's office in Chicago.

(i) An oral request for records shall not begin any time requirement.

(b) *Processing the initial request.* (1) Time limitations. Within 10 working days (excepting Saturdays, Sundays, and working holidays) after a request for records is received, the Executive Secretary shall determine and inform the requester by letter whether or the extent to which the request will be complied with, unless an extension is taken under paragraph (b)(3) of this section.

(2) Such reply letter shall include:

(i) A reference to the specific exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record, a brief explanation of how the exemption applies to the record withheld.

(ii) The name or names and positions of the person or persons, other than the Executive Secretary, responsible for the denial.

(iii) A statement that the denial may be appealed within thirty days by writing to the Chairman, National Mediation Board, Washington, DC 20572, and that judicial review will thereafter be available in the district in which the requester resides, or has his principal place of business, or the district in which the agency records are situated, or the District of Columbia.

(3) *Extension of time.* In unusual circumstances as specified in this paragraph, the Executive Secretary may extend the time for initial determination on requests up to a total of ten days (excluding Saturdays, Sundays, and legal public holidays). Extensions shall be granted in increments of five

days or less and shall be made by written notice to the requester which sets forth the reason for the extension and the date on which a determination is expected to be dispatched. As used in this paragraph “unusual circumstances” means, but only to the extent necessary to the proper processing of the request:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency or another division having substantial interest in the determination of the request, or the need for consultation among components of the agency having substantial subject matter interest therein.

(4) *Treatment of delay as a denial.* If no determination has been dispatched at the end of the ten-day period, or the last extension thereof, the requester may deem his request denied, and exercise a right of appeal, in accordance with § 1208.2(c). When no determination can be dispatched within the applicable time limit, the responsible official shall nevertheless continue to process the request; on expiration of the time limit he shall inform the requester of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to treat the delay as a denial and to appeal to the Chairman of the Board in accordance with § 1208.2(c) and he may ask the requester to forego appeal until a determination is made.

(c) *Appeals to the Chairman of the Board.* (1) When a request for records has been denied in whole or in part by the Executive Secretary or other person authorized to deny requests, the requester may, within thirty days of its receipt, appeal the denial to the Chairman of the Board. Appeals to the Chairman shall be in writing, addressed to the Chairman, National Mediation Board, Washington, DC 20572.

(2) The Chairman of the Board will act upon the appeal within twenty working days (excluding Saturdays, Sundays and legal public holidays) of its receipt unless an extension is made under paragraph (c)(3) of this section.

(3) In unusual circumstances as specified in this paragraph, the time for action on an appeal may be extended up to ten days (excluding Saturdays, Sundays and legal public holidays) minus any extension granted at the initial request level pursuant to § 1208.2(b)(3). Such extension shall be made by written notice to the requester which sets forth the reason for the extension and the date on which a determination is expected to be dispatched. As used in this paragraph “unusual circumstances” means, but only to the extent necessary to the proper processing of the appeal:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency or another division having substantial interest in the determination of the request or the need for consultation among components of the agency having substantial subject matter interest therein.

(4) *Treatment of delay as a denial.* If no determination on the appeal has been dispatched at the end of the twenty-day period or the last extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When no determination can be dispatched within the applicable time limit, the appeal will nevertheless continue to be processed; on expiration of the time limit the requester shall be informed of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to seek judicial review in the

United States district court in the district in which he resides or has his principal place of business, the district in which the Board records are situated or the District of Columbia. The requester may be asked to forego judicial review until determination of the appeal.

(d) *Indexes of certain records.* (1) The National Mediation Board at its office in Washington, DC will maintain, make available for public inspection and copying, and publish quarterly (unless the Board determines by order published in the FEDERAL REGISTER that such publication would be unnecessary or impracticable) a current index of the materials available at the Board offices which are required to be indexed by 5 U.S.C. 552(a)(2).

(i) A copy of such index shall be available at cost from the National Mediation Board, Washington, DC 20572.

(ii) [Reserved]

(2) The National Railroad Adjustment Board at its offices in Chicago, Illinois will maintain, make available for public inspection and copying, and publish quarterly (unless the Board determines by order published in the FEDERAL REGISTER that such publication would be unnecessary or impracticable) a current index of the materials available at the Board offices which are required to be indexed by 5 U.S.C. 552(a)(2).

[42 FR 43627, Aug. 30, 1977]

**§ 1208.3 General policy.**

(a) Public policy and the successful effectuation of the NMB's mission require that Board members and the employees of the NMB maintain a reputation for impartiality and integrity. Labor and management and other interested parties participating in mediation efforts must have assurance, as must labor organizations and individuals involved in questions of representation, that confidential information disclosed to Board members and employees of the NMB will not be divulged, voluntarily or by compulsion.

(b) Notwithstanding this general policy, the Board will under all circumstances endeavor to make public as much information as can be allowed.

**§ 1208.4 Material relating to representation function.**

(a) The documents constituting the record of a case, such as the notices of hearing, motions, rulings, orders, stenographic reports of the hearings, briefs, exhibits, findings upon investigation, determinations of craft or class, interpretations, dismissals, withdrawals, and certifications, are matters of official record and are available for inspection and examination during the usual business hours at the Board's offices in Washington.

(b) This part notwithstanding, the Board will treat as confidential the evidence submitted in connection with a representation dispute and the investigatory file pertaining to the representation function.

**§ 1208.5 Material relating to mediation function—confidential.**

(a) All files, reports, letters, memoranda, documents, and papers (hereinafter referred to as confidential documents) relating to the mediation function of the NMB, in the custody of the NMB or its employees relating to or acquired in their mediatory capacity under any applicable section of the Railway Labor Act of 1926, as amended, are hereby declared to be confidential. No such confidential documents or the material contained therein shall be disclosed to any unauthorized person, or be taken or withdrawn, copied or removed from the custody of the NMB or its employees by any person or by any agent of such person or his representative without the explicit consent of the NMB.

(b) However, the following specific documents: Invocation or proffer of mediation, the reply or replies of the parties, the proffer of arbitration and replies thereto, and the notice of failure of mediatory efforts in cases under section 5, First of the Railway Labor Act, as amended, are matters of official record and are available for inspection and examination.

(c) Interpretations of mediation agreements by the NMB, arising out of section 5, Second, of the Railway Labor Act, as amended, are public records and are therefore open for public inspection and examination.